APPENDIX A

(Record, pp. 63-64.)

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

Civil Action No. 16061

C. HAROLD HANKS, *Plaintiff*,

v.

BECKLEY NEWSPAPER CORPORATION, a corporation, *Defendant*.

ORDER

On the 31st day of May, 1966, came the plaintiff in person and by his attorney, and came also the Beckley Newspaper Corporation, by its Agents and attorneys, and issues having been joined each party announced ready for trial.

Whereupon, the plaintiff moved the Court to amend the pre-trial Order by striking out an issue based upon a statutory cause of action, to which no objection being made, the said Order was so amended.

Then came a jury consisting of D. B. Easter and eleven other good and lawful persons, chosen and empaneled and sworn according to law before whom the plaintiff introduced testimony and then rested his case. The defendant moved the Court to strike out plaintiff' [sic] evidence and direct a verdict for the defendant, which motion was overruled and to which the defendant excepted. The defendant thereupon introduced evidence in its behalf before the said jury and rested its case and the plaintiff again rested. And the trial not being final was recessed until the 1st day of June, 1966.

Now on this 1st day of June, 1966, the parties by their respective agents and counsel came again, and the Court instructed the jury, upon the law and its application to the case and the case was argued by counsel and the jury

having retired to consider its verdict, after a while returned into the Court the following verdict:

"We the jury find in favor of the Plaintiff, C. Harold Hanks, in the amount of $5,000.00.

Signed:
Foreman
D. B. Easter".

And the jury was discharged from the case.

It is, therefore, the judgment of this Court and it is so ordered that the plaintiff, C. Harold Hanks, shall recover of and from the defendant, Beckley Newspaper Corporation, a corporation, the sum of Five Thousand Dollars ($5,000.00) with interest thereon from the date of verdict until paid or otherwise disposed of, and his costs in his behalf expended including a taxed attorney fee in the amount of $10.00; to all of which the defendant doth except.

Enter:

s/ Robert M. Worrell
Judge

Entered in Civil Order Book No. 5 at page 380 this 25th day of June, 1966.

s/ John S. Lambert
Clerk

APPENDIX B

(Record. p. 234.)

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 8th day of May, 1967, the following order was made and entered, to-wit:

C. HAROLD HANKS

v.

BECKLEY NEWSPAPERS CORPORATION, a corporation

On a former day, to-wit, March 15, 1967, came again the petitioner, Beckley Newspaper Corporation, a corporation, by Mann, Lynch and Mann and Jack A. Mann, its attorneys, and presented to the Court its first, second and third petitions praying for an appeal from and supersedeas to a judgment of the Circuit Court of Wyoming County rendered in this action on the 16th day of July, 1966, overruling defendant's motion to set aside the verdict and judgment rendered on the 25th day of June, 1966, with the record therein accompanying the petitions, and notes of argument in support thereof, which being seen and inspected the appeal and supersedeas prayed for is refused by a majority of the Court on this third application. Judges Calhoun and Berry would grant.

A True Copy

Attest:

s/ KENNETH E. HINES
Clerk Supreme Court of Appeals

Entered in Civil Order Book No. 6 at page 228 this 12th day of May, 1967.

s/ JOHN S. LAMBERT
Clerk

APPENDIX C

The three editorials on which respondent based his libel action are as follows (Tr. 34-44):

1. *Beckley Post-Herald*, January 16, 1962.

HANKS WILL COME TO SEE YOU EVERY SIX YEARS!

A dispatch in the Sunday Post-Herald and Raleigh Register quoted C. Harold Hanks to the effect that he planned to resole his shoes in preparation for a door-to-door campaign in hopes of being renominated as circuit clerk.

We didn't think that this was going to be necessary; we understood that Clerk Hanks had managed to get the state to pave a virtually private road to his doorway.

We were had to believe that he could get out by automotive power now and wouldn't have to go on foot.

However, Clerk Hanks, who lives outside the city, but mounted a frenzied and compulsive campaign to prevent fluoridation of the city water supply, which has thus far been successful in preserving the right—God-given, according to Hanks—of kids' teeth to decay undisturbed by science, thinks the shoe bit is the gimmick that will elect him.

The story we saw didn't give any indication of who will "keep store" in Hank's absence. Maybe he will not really be missed at the courthouse when he is out trying to reach "every voter in the county."

But really we have some feeling that since he was elected to the circuit clerk job, he really ought to put in some time at the clerk's office instead of gumshoeing around the county, pawing the unwary citizens.

If the clerk could do this job on his own time, we would be relatively indifferent. But we don't feel that the citizens ought to have to pay him for campaigning as they probably

did before when he was supposed to be managing the airport.

And speaking more personally, we won't mind at all if he spares us the worn-out brogan and grubby paw act! We weren't impressed the last time around. And repetition doesn't lend enchantment. Distance does, Mr. Clerk.

2. *Beckley Post-Herald,* September 4, 1962.

THE FLUORIDATION SITUATION REMAINS UNCHANGED

About the middle of last month we wrote here at some length about the situation in regard to Beckley's water supply and the failure of thousands of Raleigh County children to gain the considerable benefits of fluoridation.

Admittedly, we romped pretty heavily upon Circuit Clerk Harold Hanks and Mrs. Elinor Hurt, president of the Raleigh County Board of Health. We thought it was something they deserved. We still do.

We did not hear anything directly from either of the two denizens of the Raleigh County Courthouse. But indirectly we got the word of their displeasure. One way or another, word of this sort of thing always gets around.

If our understanding of Mrs. Hurt's position is correct, she is "not against fluoridation" at all. But she will give forth a lot of the foolish arguments against it which have been disproved. And apparently she will not lift a finger in her official position on the Board of Health to do anything in behalf of the numerous children of this area who face future lives with a certainty of poorer dental health than would have been necessary. She hasn't for more than two years insofar as we have been able to learn.

We were also informed—indirectly, of course—that Mrs. Hurt does not consider herself a political power in the county. She apparently would have us believe that she has

no influence with either elected officials or the Democratic Party organizations.

Just why she is always in the middle of the county's political affairs, if this is the case, is something of a mystery to us. People who have no political influence and are not seeking such are rarely found occupying the positions which Mrs. Hurt holds, either in the employ of the Raleigh County Court, or in the numerous other functions of the body politic in this county.

IF IT IS TRUE that Mrs. Hurt does not dabble in politics, why on earth is she always so reluctant to make information available to the general public through the various news media? She is secretary or otherwise involved in the business of the County Court, the County Park Board, the County Board of Health, the County Democratic Executive Committee, and is a deputy county clerk.

She pleads that she is not a political power, and that because she receives no pay for some of these jobs she should not be subject to criticism concerning them.

Here, again, she seems to want to follow in the footsteps of Hanks. For it was Hanks who ordered over the telephone once that he did not want his name to appear in the Beckley Post-Herald again. He backed up this order with an inexplicit threat—one merely intended to frighten those who are easily intimidated.

The only conclusion to which we can come is that either Hanks and Mrs. Hurt have been in league toward the fanatic end, believing all the wild-eyed ravings against fluoridation despite decades of experience to disprove them, or that perhaps his blustering threats were able to intimidate the lady.

Frankly, we have admired Mrs. Hurt for many things in the past and still do in some respects. We doubt that she could be intimidated easily, even by Hanks.

As long as the situation now extant remains so, we can only retain the same opinion we expressed earlier that these politicians have successfully withheld the hygenic measure which fluoridation is from our children for years, "that Mrs. Hurt is not properly concerned with the health of this county and should not be allowed to head, or even serve upon, the Raleigh County Board of Health." Her concerns are too completely political for the good of the county's health.

And again, "if the voters are intelligent, they will oust Hanks without ceremony in November."

3. *Beckley Post-Herald,* November 5, 1962.

AS WE SEE THE MEN, ISSUES TO BE DECIDED

Though the Beckley Post-Herald is a Republican newspaper and believes firmly that the principles of the Republican Party offer far greater certainty of the continuing freedom and strength of our nation, it does not believe that voters should go strictly by party affiliation in deciding how to mark their ballots.

Rather, the voters' own best interests dictate that they should always vote for the man they believe best suited to the office concerned regardless of his (or her) political affiliation. When all things are deemed equal between candidates, then party principles should prevail, perhaps, but such situations are infrequent.

The Post-Harold urges its readers who may be in doubt to vote for M. G. (Mal) Guthrie as Third District congressman and Cooper Benedict as Second District representative both because it seems abundantly clear that they are better men than the incumbents and because 30 years of almost solidly Democratic rule in West Virginia have brought the state to the brink of disaster with ever-higher taxes at both state and federal levels and ever-lower population figures and economic circumstances. Both congressional candidates

are firmly pledged toward a reversal of the unwise policies which have led the Mountain State into such straitened circumstances.

In actuality our difficulties also stem from one of the nation's poorest congresswomen, Mrs. Elizabeth Kee. But we have come to feel that the Fifth District really deserves the representation it has. Fayette County, which is new to the district, also pretty well deserves the likes of Mrs. Kee. It has blindly voted for Cleveland Bailey and his brand of socialism in the past and is largely responsible for having kept him in the old Third District seat.

If state voters elect Fred H. Caplan, the governor's appointee, to the State Supreme Court they will be supporting the hand-picking of men instead of their election. They will also be selecting the least experienced man—a man of much less experience than the other four judges now serving.

Judge Max DeBerry of the Third Circuit is a great deal more qualified. In addition there is no valid reason why one of the five judges on the state's highest court should not be a representative for the minority party of about forty per cent of the state's people.

WE ARE OFFERING NO recommendations in regard to the State Senate seat or the county's criminal judgeship.

G. C. Porter, the Senate incumbent by appointment, has done nothing except follow his party line and has been disappointing. He has been a better city councilman here, and Raleigh County Democrats voted against him in the primary.

On the other hand, O. A. Phillips of Sophia has hardly lifted a hand to let anyone know where he stands. He failed to attend his own party's county rally last week.

MINOR L. SCOTT of Table Rock is an outstanding candidate for the county court post. He has done notably good jobs for the county previously, both in four years of road

building and maintenance work which topped any before or since and in agriculture work.

Hundreds of Democrats have hailed Scott's prior performance and his present candidacy. Many of them agree that it is time for the minority party to be represented on the Raleigh County Court once again, believing it would have a beneficial effect on the other majority party office holders.

C. O. Smith Jr. has done an outstanding job as county clerk for six years. He has left foolish partisanship out of the county's business affairs and has delivered sensible administration of his office's affairs. He deserves re-election!

We cannot make any real case for Emery E. James of Cirtsville to be a topnotch circuit clerk, but the incumbent, C. Harold Hanks, makes him look good nevertheless. Hanks has made it clear that he cares not at all about our children in delaying needed fluoridation of the local water supply by two years or more. He has also been reported as saying he would fight it further after the election.

Hanks is really a rather unsavory character.

UNFORTUNATELY, there is not one good ticket for the House of Delegates in both parties' candidates.

Perry Clay Price and T. R. Wilson have made it clear they want to see some real beneficial reforms for West Virginia. This appears also to be true for Mrs. W. W. Withrow. We urge the election of these three. If there is a choice to be made among the other three, we would have to give the nod to C. Berkley Lilly.

Mrs. Withrow started out poorly, refusing to be interviewed and to state her position. This seems to have changed. She now makes herself much clearer on her position, and though we do not always agree with her, we feel

she is proving a good representative of Raleigh County. It is also well for Sophia to have one of the four.

We have been sadly disappointed by David Abrams. We considered him promising but he has turned out to be a party-liner, easily to be controlled by the political bosses, it appears. Dale Covey is the least of the six contenders, apparently anxious to change laws governing school board members.

ALL LAST WEEK we outlined our positions on the five constitutional amendment proposals. We favor those on Alcoholic Liquor Control and the State Executive and Budget. We oppose those on Sheriffs' Succession, (un)Fair Representation, and the Legislative.

We find the West Virginia League of Women Voters agrees with us in regard to the two on which they have taken a stand. They are for the State Executive and Budget Amendment and against the (un)Fair Representation. We are happy to have such good company.

Most of all, we urge that you vote! Vote for the men you think will be best in the offices to be filled.

APPENDIX D

The two editorials introduced by respondent for the purpose of showing that petitioner acted with malice are as follows (Tr. 23-32):

1. *Beckley Post-Herald,* November 3, 1960.

ON HAROLD'S HANKERINGS

The time has surely arrived once again when it is necessary to call a spade just what it is.

Some little time ago as election pressures began to mount, Raleigh County's eccentric circuit clerk, Harold Hanks, seized upon the situation as an opportunity for a bit of personal aggrandizement. He began spouting forth declamations as though he were at least a congressman, if not a senator.

Ever since the puny eruptions began we have, considering the source, felt the oracular brayings unworthy of any special comment.

Now, however, the distortions and twistings of the truth by Hanks have reached the point where it seems proper that the facts should be presented to the public, lest it be greatly misled.

Hanks is a Democrat who pretends that he was somewhat sympathetic with the Republican-administered State Road Commission until it failed to drop everything it was doing in order to build what almost amounts to a private driveway for him.

We would point out that when what is obviously a matter of personal gain tends to interfere in important public affairs, the Post-Herald has not hesitated to call it such even when Republicans were chiefly involved. We did this in regard to the threat of a local hullaballoo over the selection of a new post office site for Beckley which conceivably would have cost the city a new post office for perhaps years.

Harold Hanks lives on what is now known as W. Va. Secondary Route 6/3, a few hundred feet off of the primary highway, Route 3 or Harper Road. It is our understanding that he constructed his home in 1958.

Assuming he has normal intelligence, he knew quite well what the situation was in regard to road construction and funds for the same from our Legislature, controlled by his party. He should have known that hundreds—indeed, thousands—of Raleigh Countians have had homes located for the 35 years since road paving began in this area on narrow, unimproved roads and still have little hope of getting really good roads in the immediate future.

Apparently Hanks thought that just because he happens to be a clerk of the circuit court, he could obtain expensive road improvements rather quickly, for, by his own claim, he began agitating for such improvements in November of 1965 [sic].

IN HIS STATEMENTS, he has claimed that he was promised something but has been unable to show promises of anything other than consideration of his problem. He has made it obvious that he received a good bit of attention from SRC personnel and about a year of polite and civil response to his insistent demands.

He has also claimed that the road which serves him has received no attention or work. In actuality, SRC records show that it has been worked upon five times since the first of this year. Two times it was for snow and ice removal, twice red-dog applications were made (once near his home in direct response to his personal request), and a fifth time to cut brush on the right-of-way.

In the latter connection, Hanks' vengeful political posters show the road as if it were virtually closed by overhanging brush. The picture almost had to have been taken prior to last June when the SRC records show that the brush was

cut on the narrow road. And this would indicate that he had planned his political attack long before it was launched.

One of the big problems in connection with the road which turns off Harper Road between the old Frank Foote home, now occupied by W. B. Tilley, and the property of Adolph Bair opposite the Hulett Smith estate is that of the right-of-way.

The county's SRC supervisor, Minor Scott, admitted by Hanks to have been "fair and honest with me," says that the first need for improving the road is widening. But this represents a real problem and could entail a court suit or suits.

J. A. Haws, district SRC engineer at Princeton, says it is part of the Old Logan Turnpike, one of the two oldest roads in the county. By ruling of the State Supreme Court on roads established prior to 1935, this means it should have a 30-foot right-of-way, running 15 feet each way from the center. But, Haws says, it "has been encroached upon and encroached upon until there's almost nothing left." To substantiate this statement, the SRC has received a letter from Herbert Stansbury, a Beckley lawyer representing Adolph Bair, indicating that his client will resist any idea that the land he occupies up to the edge of the narrow roadway belongs within the Old Logan Turnpike right-of-way.

On the other side of the road, the Tilley home is fairly close to the road and a garage building sets largely within 15 feet of the center of the road. A 30-foot right-of-way would even take some of what Hanks no doubt considers his property.

Behind the two corner properties there are only four occupied homes and one trailer home which use the road. Though it goes on through to the Maxwell Hill community, all but one of the homes beyond the West Virginia Turnpike use the Maxwell Hill Road for access. Though the Turnpike Commission has a maintenance building along the road, it can also be reached via the Turnpike itself, and the commis-

sion has shown no interest in improvement of the Hanks access road.

While only two-tenths of a mile from Route 3 to the maintenance garage are involved, it could prove quite expensive (just in court costs, perhaps) to gain the needed right-of-way and would set a precedent for little-used secondary roads if property was purchased.

Still and all, Hanks thinks his road, serving four or five families is more important than such as the Tommys Creek, Richmond District or Old Crow roads that serve dozens if not hundreds of families many of which are miles from good primary roads instead of a few hundred feet.

As we indicated above, this seems to us to indicate an outsize sense of personal importance which is not well rooted in reality.

2. *Beckley Post-Herald*, June 20, 1961.

HANKS ASKED FOR IT

We were a bit amazed on Sunday to receive a telephone call, from a man who should know better, which was not only threatening but proposed to dictate to the newspapers what they might and might not write about in regard to editorial criticism.

It just so happens that this man, C. Harold Hanks, holds a high county office—that of circuit clerk. If his experience in his post has taught him anything, he should know that threats of bodily harm are looked upon rather dimly by the law.

He should also know that anyone who aspires to, or holds, public office is, by ruling of our courts, subject to searching scrutiny and criticism in regard to all his actions. When a man asks or receives public trust, he cannot expect to gain any sort of immunity to public criticism, not even for the asking.

Hanks' background is such that a newcomer to this community might have difficulty in understanding the present situation.

He held public office by appointment from the county commissioners when he became manager of the Raleigh County Memorial Airport. Then he decided to run for the office of circuit clerk. It is our understanding that he went from door to door to talk with large numbers of the voters —perhaps a majority of them—to solicit their votes. We do not recall at the moment whether he resigned his airport managership in order to do this or not.

In any event, he was elected. Insofar as we know, he has done a reasonably good job as clerk of our courts. Normally, this would be the end of such a story.

IN HAROLD HANKS' CASE, however, this is not all by any means. Since his election to the clerkship, he has twice used his office to enter into highly controversial actions and, apparently, to try to influence other high officials to do his bidding.

The first had to do with the fluoridation of the Beckley water supply, which has also become the water supply for perhaps more than half of Raleigh County, and at least a small part of Fayette County. Hanks now tries to claim that he was only a small cog in the wheel of opposition to fluoridation. Yet, he was by far the most influential opponent to inveigh against it—partially by virtue of the office to which he had been elected—and he was certainly the man who spoke at greatest length in a public hearing on the matter.

Now, he appears to want to forget this fact and demands that everyone else forget it, too, or at least make no public reference to the fact.

He also seems more interested in settling the issue by offering to meet an editor for fisticuffs in the middle of a

vacant parking lot at night than by any reference to scientific facts of the matter. As we see it, whether he or an editor can best the other in a brawl has little to do with either good health or good government for Raleigh Countians.

The facts still remain that all major West Virginia cities except Beckley have fluoridation of their water supplies for the benefit of their children—and Beckley is supposed to be a major medical center!—and more than half the nation's people are likewise improving their water supplies and their people's dental health.

In discussing the fluoridation issue, Hanks appears to admit that the treatment is good for children's teeth. The fact is that it helps adults' teeth too, but to a lesser degree. He still clings to an idea that fluoride is a health menace to older people—stating that it affects their kidneys adversely. The doctors who have studied the matter say that this is just another red herring from the fanatical cult which has grown up to oppose fluoridation. It still has never been proved to have ANY adverse affects on humans of any age, while its benefits are well proven. We have this on the authority of the UMW area medical administrator, Dr. Deane F. Brooke, and numerous other authorities.

THE PERSONAL DESIRE for road-paving was the next point at which Hanks intruded himself into public controversy. He lives a short distance from a primary highway and decided that his access road should be paved regardless of any and all other considerations. Though he was not otherwise concerned personally in the election last year, he entered into the campaign by threatening the incumbent administration with his strongest possible political opposition if his road was not paved. The threat was ignored and he carried it out. Apparently, for his help in the campaign, he has now, we understand, gotten the road improved right up to his house.

This certainly smacks of misuse, for personal gain, of the influence of his public office. When he received his place on

the public payroll, he should have realized that he had forfeited any right to special consideration in such things. Instead, his attitude seems to be that he won the right to special consideration in all things."

He indicates this to the extent that he believes by making a threatening telephone call, he can withdraw the right of free criticism of his actions as a public official. In actuality, it was this action which made this added comment a necessity and a certainty.

No newspaper can permit its editorial voice to be stilled or affected so. It cannot even permit such an impression to be gained by a public official—or a private individual.

APPENDIX E

The following complaint was filed by the mayor of Beckley against petitioner, claiming $75,000 in damages for an alleged libel:

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

Civil Action No.

JOHN WESLEY SMITH, *Plaintiff*

v.

BECKLEY NEWSPAPERS CORPORATION, A CORPORATION, *Defendant*

COMPLAINT FOR LIBEL

(1) The plaintiff, John Wesley Smith, is now and has always been a good, true, moral, honest, upright and worthy person and citizen of West Virginia and is now a resident of Raleigh County, West Virginia, and presently is and was during two years or more preceding the institution of this action, the Mayor of the City of Beckley, Raleigh County, West Virginia. Until the committing of the several grievances and injuries hereinafter mentioned, plaintiff was always reputed, esteemed and accepted by and among his neighbors and the good and worthy citizens of this State and especially of Wyoming, Raleigh, Fayette, Summers and Mercer Counties to be a person of good character, name, fame and credit; physically clean, honest, sober and of good morals and conduct; and law-abiding in act, deed and attitude.

(2) The defendant, Beckley Newspapers Corporation, is a corporation, whose principal office is located at Beckley, West Virginia, now and during the past two years, engaged in the business of publishing two daily newspapers, namely, "The Beckley Post-Herald" and "The Raleigh Register,"

which are widely distributed and generally published, circulated and read in the vicinity of, and area and counties surrounding Beckley, including Wyoming County, West Virginia, where said newspapers have an extensive, general, daily publication and circulation. The Sunday edition of said newspapers is a combined newspaper known as the "Beckley Post Herald" and the "Raleigh Register," and likewise was generally published and widely distributed, circulated and read in the City of Beckley, in all places in said Raleigh County and in other counties surrounding said Raleigh County, including the county of Wyoming.

(3) For more than two years immediately preceding the institution of this suit, and particularly during the past two years, the defendant then and there maliciously intending to injure the plaintiff in his good name, fame and morals, and to bring him into public scandal, disgrace, infamy, hatred, scorn, ridicule and contempt, with and among his neighbors and other members of the public in his home city of Beckley, and his home county of Raleigh and the county of Wyoming and other counties adjacent thereto where said newspapers were published, distributed and circulated and to vex, embarrass, humiliate, harass and oppress him, at various times did falsely, recklessly and maliciously compose, print, publish and circulate in said newspapers owned, controlled, managed, published and distributed by said Beckley Newspapers Corporation, false, scandalous, untrue, malicious and defamatory libels of the plaintiff as to his morals, honesty, his sobriety, his integrity, his character, his birth, his personal cleanliness and the propriety of his actions, and his conduct as a public officer and official, contending, among other things, the false, untrue, scandalous, malicious, defamatory and libelous matter of and concerning the plaintiff as set forth in paragraphs (3a), (3b), (3c), (3d) and (3e) hereof.

(3a) In the issue of the "Raleigh Register" of February 18, 1966, said defendant, in a column entitled "Ring Regis-

ter" composed, printed, published and circulated the following of and concerning the plaintiff:

"Q: Ask Mayor Smith about the steel in his yard. Is it part of the steel from the parking building? Did the City pay for it? Where's a bill of sale?

"A: The Mayor is adding a double carport, a bath and a recreation room to his home at 905 Woodlawn Ave. Estimated cost, according to City Building Permit records, is $7,000.

"He said the bills of sale are being kept on file, that the steel being used is not from the Parking Building allotment, that the City did not pay for it, and that he considers further questions an invasion of his privacy."

By means of the said false, untrue, malicious and defamatory statements by the defendant, the plaintiff has been and is greatly injured in his good name, fame and credit and brought into public scandal, infamy and disgrace with and among all of his neighbors and other good and worthy citizens of the aforesaid counties where the said newspaper is published and is circulated, and defendant hath greatly injured him, his fame, credit, character and reputation as a public officer, namely Mayor of the said City of Beckley, Raleigh County, West Virginia, insomuch that diverse of those neighbors and citizens to whom the good character of the plaintiff in the premises were unknown, have, on account of the committing of said grievance by the defendant, from thence hitherto suspected and believed, and still do suspect and believe the plaintiff to have been, and to be, a faithless and dishonest public servant who uses his official position and public office for personal gain and profit, and to have been and to be engaged in unlawful or illegal conduct and/or in violation of the law, and that he had illegally, unlawfully and improperly acquired or taken steel from the City for his personal use.

(3b) In the issue of the "Raleigh Register" of January 4, 1967, said defendant again said of and concerning the plaintiff:

"It would be nice to have a mayor who had risen above petty politics, who had the courage to decline to be a party to the conspiracy against the liquor laws, who was a man of such integrity that the office would seek him rather than the other way around.

"It would be nice to have a mayor who would answer the public's questions about his activities (the steel for his house addition, remember, which he declined to discuss).

"...

"...

"It is useful to the present breed of politician most of whom have the integrity of the chameleon, little or no character, but merely seek by whatever means to be anointed by the party, and an unthinking electorate, which cares little about the kind of government it gets."

By means of the said false, malicious and defamatory statements by the defendant, the plaintiff hath been and is greatly injured in his good name, fame and credit, and brought into public scandal, infamy and disgrace with and among his neighbors and other good and worthy citizens of the aforesaid counties where said newspaper is published and is circulated, insomuch that diverse of those neighbors and citizens to whom the good character of the plaintiff in the premises were unknown, have, on account of defendant's said acts, from thence hitherto suspected and believed and do suspect and believe the plaintiff to have been and to be engaged or participating in illegal and unlawful conduct and who had been a party to a conspiracy to violation of the law, and again that he had stolen, taken or otherwise illegally and unlawfully acquired steel for his home or yard

from the City. And he hath been and is much injured and damnified.

(3c) In the issue of the "Raleigh Register" of January 13, 1967, said defendant impliedly said of and concerning the plaintiff in discussing the city administration of which the plaintiff was the chief executive officer:

> "Who knows, maybe honesty is the best policy. Wouldn't it be nice if the City would try it as a small experiment?"

By the means of the committing of which said grievance by the said defendant as aforesaid, the said plaintiff has been and is greatly injured in his good name, fame and credit, and brought into public scandal, infamy and disgrace with and amongst all his neighbors and other good and worthy citizens of the aforesaid counties and State, insomuch that diverse of those neighbors and citizens to whom the good character of the plaintiff in the premises were unknown, have, on account of the committing of said grievance by the defendant, as aforesaid, from thence hitherto suspected and believed, and still do suspect and believe, the plaintiff to have been and to be dishonest.

(3d) In the issue of the "Beckley Post-Herald" of February 9, 1967, in discussing the city administration headed by the plaintiff as chief executive officer, said defendant expressly or impliedly said of and concerning the plaintiff:

> "Whatever the present city administration may have done, it has not fulfilled its first and basic responsibility toward the citizenry to operate openly and honestly in the interests of all the people of Beckley. Rather, it has played 'footsie' with various special interests and has meted out favors to its friends and petty punishment to those who have not played the game its way.
>
> "The past four years have proved to be an ignoble experiment in government by indirection from the

Statehouse in Charleston. Never before has Beckley permitted its city budget and city affairs to be manipulated for the benefit of the statehouse machine. And each passing day shows more and more how much this outside manipulation can hurt a city and cut down its potential!

"There has been a singular lack of intelligence at city hall for the past four years. . . ."

By the means of the committing of which said grievance by the said defendant as aforesaid, the said plaintiff has been and is greatly injured in his good name, fame and credit, and brought into public scandal, infamy and disgrace with and amongst all his neighbors and other good and worthy citizens of the aforesaid counties and State, insomuch that diverse of those neighbors and citizens to whom the good character of the plaintiff in the premises were unknown, have, on account of the committing of said grievance by the defendant, as aforesaid, from thence hitherto suspected and believed, and still do suspect and believe, the plaintiff to have been and to be dishonest, irresponsible, guilty of unlawful conduct, unintelligent and to have been a faithless and dishonest public servant who has used his official position in public office for personal gain and profit, and for profit to his friends, and to have unlawfully and illegally, through his official position, inflicted unlawful punishment on others, all to the great injury and damage of the plaintiff.

(3e) In the issue of the "Post-Herald" of May 22, 1967, said defendant again said of and concerning the plaintiff:

"This is the type of operation the John Smith administration has been noted for during the past four years. There can be no credibility on the part of the public because there is a wide gap between obvious facts and official lies.

". . .

"There is as likely to be a lie as the truth told here when one seeks information from the city. There has been a colossal waste of taxpayers' moneys. And partisan machine politics and personal gain have been riddled throughout the operation of the city since July 1, 1963."

By means of the said false, untrue, malicious and defamatory statements by the defendant, the plaintiff has been and is greatly injured in his good name, fame and credit and brought into public scandal, infamy and disgrace with and among all of his neighbors and other good and worthy citizens of the aforesaid counties where the said newspaper is published and is circulated, and defendant hath greatly injured him, his fame, credit, character and reputation as a public officer, namely Mayor of the said City of Beckley, Raleigh County, West Virginia, insomuch that diverse of those neighbors and citizens to whom the good character of the plaintiff in the premises were unknown, have, on account of the committing of said grievance by the defendant, from thence hitherto suspected and believed, and still do suspect and believe the plaintiff to have been, and to be, a faithless and dishonest public servant who uses his official position and public office for personal gain and profit; that the plaintiff was unfit for office because he was dishonestly engaging in untruths and was not credible in his official capacity, and because he used his official position for personal gain and profit and thereby being engaged in illegal and improper activity and a crime.

(4) That the defendant, by said communications, said malicious, false, scandalous, untrue, defamatory and libelous communications, publications and matters of and concerning the plaintiff hereinbefore set forth, maliciously meant and was understood to mean by persons to whom said written communications, matters and publications were made, amongst other things, as follows: that plaintiff, as a public officer, had knowingly violated the constitution and

laws of the State of West Virginia in illegally using public funds and the position of his public office to benefit persons, departments or parties not entitled thereto, and for personal gain and profit; that plaintiff, as a public officer, had appropriated to his own use and embezzled public properties and thus was guilty of and had committed a felony and a crime under the laws of the State of West Virginia; that the plaintiff had been guilty of a want of integrity in the conduct of his official position as Mayor of Beckley; that plaintiff, as a public officer, had used his official position to be a conspiracy to violate the laws of the State of West Virginia [sic] and thus guilty of a crime; that the plaintiff was unfit for office because of being dishonest, unworthy, of low character and faithless in the performance of the duties thereof; that the plaintiff, in his official position, has not operated honestly, and has used the same to inflict undue and unlawful punishment upon certain persons while failing to perform the duties of his office or require those under his control to perform the duties of their office with regard to all persons; that the plaintiff, in his public position, has misused or squandered, or caused to be misused or squandered, public funds; that the plaintiff was unfit for office because of his lack of intelligence; and, that by reason of the aforesaid matters and things in this paragraph, and all other paragraphs hereinbefore set out and contained, the plaintiff hath been greatly injured and damnified.

(5) That the said defamatory, scandalous and libelous statements, and each of them, in said publications herein mentioned were not a fair nor a true report of any public or official proceedings or actions and were and are false and were known by the defendant to be false when they were composed, published and circulated, or made with a reckless disregard as to whether they were true or false, and were made by the defendant by and through its duly authorized agents, and employees, with malice and wilful intent to defame and injure the plaintiff in and about his reputation and character, as aforesaid.

WHEREFORE, the plaintiff demands a judgment for compensatory damages against the defendant, Beckley Newspapers Corporation, a corporation, for a sum of Fifty Thousand Dollars ($50,000.00); and the plaintiff further demands judgment against said defendant, Beckley Newspapers Corporation, a corporation, for punitive damages because of the herein alleged wilful, malicious, defamatory and libelous publications and statements by the defendant in the sum of Twenty-five Thousand Dollars ($25,000.00), or a total judgment in the sum of Seventy-five Thousand Dollars ($75,000.00) and costs.

The plaintiff hereby demands a trial by jury of all issues so triable.

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